



BRB No. 17-0507 BLA
Case No. 2015-BLA-05536

JERRY W. EVANS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
APOLLO FUELS, INCORPORATED)	
)	DATE ISSUED: 10/19/2018
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS’)	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	ORDER on
Party-in-Interest)	RECONSIDERATION

As no member of the panel has voted to vacate or modify the decision herein, the motion for reconsideration filed by employer is DENIED.¹ 33 U.S.C. §921(b)(5); 20 C.F.R. §§801.301(b); 802.407(a); 802.409.

¹ Employer argues for the first time on reconsideration that the manner in which Department of Labor administrative law judges are appointed violates the Appointments Clause of the Constitution, Art. II § 2, cl. 2. Employer’s Motion for Reconsideration at 1-2. Because employer first raised the Appointments Clause issue only after the Board issued its decision on the merits, employer forfeited the issue. *See Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044, 2055 (2018) (requiring “a timely challenge to the constitutional validity of the appointment of an officer who adjudicates [a party’s] case”); *see also Williams v. Humphreys Enters., Inc.*, 19 BLR 1-111, 1-114 (1995) (the Board generally will not consider new issues raised by the petitioner after it has filed its brief identifying the issues to be considered on appeal); *Senick v. Keystone Coal Mining Co.*, 5 BLR 1-395, 1-398 (1982).

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge